APPENDIX "A"

Opinion of Mr. Justice Joseph E. Daily of the Supreme Court of Illinois, dated March 18, 1964, affirming the judgment of the lower Court.

Docket No. 37592 Alice Schuringa *et al.*, Appellants, v. The City of Chicago *et al.*, Appellees.

Mr. Justice Daily delivered the opinion of the court:

This suit, brought in the superior court of Cook County against the city of Chicago and certain of its officials, is a taxpayers' action to enjoin defendants from fluoridating the city's water supply. Because constitutional questions are involved, plaintiffs appeal directly to this court for review of a decree dimissing their complaint for want of equity. Upon leave granted, the Chicago Dental Society has filed a brief as *amicus curiae* in support of the decree.

The events leading to the action had their beginning on October 31, 1951, when a special committee of the city council was appointed to study water fluoridation from the point of view of public health. Public hearings were held as the result of which the committee concluded that fluoridation of water served to prevent dental caries, or tooth decay, and that it was in no way physically harmful, and recommended that fluorides be introduced into the city's water supply. Upon the basis of such study and recommendation, as well as an opinion of the corporation counsel that a fluoridation program would not violate constitutional or other legal rights, the council passed a resolution on June 16, 1954, declaring the fluoridation of the water supply to be in the interest of the public health and further providing, in part: "* * * that steps for the introduction of

fluoride in a concentration adequate for safety and in accordance with the regulations prescribed by the Illinois Department of Health be undertaken by the City of Chicago through its Department of Water and Sewers with the cooperation of the Chicago Board of Health by January 1, 1955." Thereafter, the program and its manner of execution and administration were approved by the Illinois Department of Health and it was set into operation on May 1, 1956.

It appears that the city water supply, taken from Lake Michigan, has a natural fluoride content ranging from approximately .04 to .15 parts to a million parts of water. Under the program fluoride is added at strategic control points in quantities sufficient to maintain in the entire city system an optimum fluoride level of 1.0 part per million parts of water. There is no question but that the city uses the most advanced, safe and sanitary methods to inject the fluoride into the supply, and it also appears that constant tests to determine fluoride content are performed both by the city and the State.

Shortly after the program went into effect, the plaintiffs, suing as taxpayers and users of the city's water system, brought this suit for injunctive relief. One plaintiff is a dentist in general practice, two are housewives and the fourth, Walter Olson, is a practicing member of a religious sect which rejects the use of material medicine and relies upon spiritual means alone for healing disease. The cause was referred to a master in chancery to hear the evidence. After prolonged hearings and upon consideration of a voluminous record, the master made three basic findings of fact: (1) that fluoridation reduces dental caries by sixty per cent in children up to fourteen years of age; (2) that

fluoridation of one part per million parts of water will not cause mottled teeth; and (3) that fluoridation to such extent will not cause systemic physical harm to the population as a whole. On the basis of such findings, as well as his conclusions that no legal rights were violated, the master recommended that plaintiffs' complaint be dismissed for want of equity. After exceptions to the master's report had been considered and overruled, such a decree was entered. This appeal has followed.

Essentially, plaintiffs' contentions are that the master's findings of fact are either unsupported by the evidence or against the manifest weight thereof, that the legislative action in question is an unreasonable, arbitrary and unwarranted exercise of the police power, and that it infringes upon fundamental liberties protected by constitutional guarantees of due process of law. As to the plaintiff Olson it was contended below and in the brief filed in this court, that the fluoridation program was compulsory medication which violated the right to religious freedom guaranteed him by the first and fourteenth amendments to the Federal constitution. However, the latter issue, no stranger to the halls of justice in the setting here raised, (See: *Dowell* v. *City of Tulsa*, (Okla. 1954,) 273 P.2d 856, 864, *certiorari* denied 348 U.S. 912, 99 L. ed. 715; *Readey* v. *St. Louis County Water Co.* (Mo. 1961,) 352 S.W.2d 622, 628,) has become moot and is no longer an issue in the appeal, under the circumstance that the plaintiff Olson has voluntarily withdrawn and obtained a dismissal of the appeal as it relates to him. It is axiomatic that this court, unless the public interest demands it, will not consider abstract or moot questions, (*cf. People ex rel. Lawrence* v. *Village of Oak Park*, 356 Ill. 154; *National Jockey Club* v. *Illinois Racing Com.*

364 Ill. 630,) and, moreover, the remaining plaintiffs are not injuriously affected by the operation of the legislation on such ground. *Cf. Klein* v. *Dept. of Registration and Education*, 412 Ill. 75, 87; *City of Chicago* v. *Rhine*, 363 Ill. 619, 626.

The police power of the State is a basic attribute of sovereignty which exists without any special grant or reservation in the constitution, (*Chicago Junction Railway Co.* v. *Illinois Commerce Com.* 412 Ill. 579; *Berry* v. *City of Chicago*, 320 Ill. 536,) and we may begin our consideration of the issues here raised with the statement of two elementary and undeniable principles. First, that the police power may be validly exercised in order to protect the public health, (*City of West Frankfurt* v. *Fullop*, 6 Ill.2d 609; *People ex rel. Kerner* v. *Huls*, 355 Ill. 412,) and that the State of Illinois, as it may lawfully do, has delegated to its municipalities the police power to protect the public health both generally, (Ill. Rev. Stat. 1963, chap. 24, par. 11—20—5,) and specifically with respect to water systems. (Ill. Rev. Stat. 1963, chap. 24, par. 11—139—8 (2); see also: *Gundling* v. *City of Chicago*, 176 Ill. 340.) Equally settled and certain is the concept that a police measure, to be beyond the pale of constitutional infirmity, must bear a reasonable relation to the public health or other purpose sought to be served, the means being reasonably necessary and suitable for the accomplishment of such purpose, (*Strub* v. *Village of Deerfield*, 19 Ill.2d 401; *Vissering Mercantile Co.* v. *Annunzio*, 1 Ill.2d 108; *Lawton* v. *Steele*, 152 U.S. 133, 38 L. ed. 385,) and the principle that courts will not interfere with legislation falling within the orbit of a municipality's police power unless there is a palpably arbitrary or unfair exercise of the power. (*City of Chicago* v. *R. & X. Restaurant*, 369 Ill. 65; *Chicago Cosmetic Co.* v.

City of Chicago, 374 Ill. 384. The first issues thus confronting us are whether the fluoridation of water is so related to the public health as to constitute it a proper exercise of the police power, and whether fluoridation is reasonably necessary and suitable for the protection of the public health.

And while the matter is one of first impression in this jurisdiction, it is a question which has been the subject of much litigation in our time In this country, on the occasions where the matter has been subjected to judicial scrutiny, there has been unanimous accord that the fluoridation of water by one part of fluoride to a million parts of water is a reasonable and proper exercise of the police power in the interest of the public health, and that it is not subject to constitutional infirmities thus far conceived. (See: *Chapman* v. *City of Shreveport,* 225 La. 859, 74 So. 2d 142, *certiorari* denied 348 U.S. 892, 99 L. ed. 701; *Kraus* v. *City of Cleveland,* 163 Ohio St. 559, 127 N.E.2d 609, *certiorari* denied 351 U.S. 935, 100 L. ed. 1463; *Dowell* v. *City of Tulsa,* (Okla. 1954,) 273 P.2d 859, *certiorari* denied 348 U.S. 912, 99 L. ed. 715; *de Aryan* v. *Butler,* 119 Cal. App. 2d 674, 260 P.2d 98, *certiorari denied* 347 U.S. 1012, 98 L. ed. 1135; *Froncek* v. *City of Milwaukee,* 269 Wis. 276, 69 N.W.2d 242; *Readey* v. *St. Louis County Water Co.* (Mo. 1961,) 352 S.W.2d 622; *Baer* v. *City of Bend,* 206 Ore. 221, 292 P.2d 134; *Kaul* v. *City of Chehalis,* 45 Wash. 2d 616, 277 P.2d 352; *City of Fort Pierce* v. *State ex rel. Altenhoff,* (Fla. 1962,) 143 So. 2d 879. *Cf. Wilson* v. *City of Council Bluffs,* (253 Ia. 162,) 110 N.W.2d 569.) On the other hand, we are told in plaintiffs' brief that the highest courts of Canada and Sweden have ruled against fluoridation, the former apparently concluding that such a program was beyond the statutory author-

ity of municipalities, (*Municipality of Metropolitan Toronto* v. *Village of Forest Hill*, (1957) 9 D.L.R.2d 113,) and the latter apparently concluding, among other things, that there were possibilities of risk and disadvantage to health. (*Association for Promotion of Health* v. *Town of Norrkopping*, (Sweden, 1961.) The High Court of Dublin, Ireland, to the contrary, shares the American view to date that fluoridation of public waters is neither physically harmful nor legally improper. *Ryan* v. *Attorney General*, (1963.)

On approaching the factual issue of whether the fluoridation of drinking water by one part per million is reasonably related to and suitable for the protection of the public health, it may be said to be uncontradicted that dental caries, or tooth decay, presents a continuing and unsolved problem of general health on a national scale, and that it is a disease from which no community, level of society or age group is immune. Fluorides, in varying proportions, exist naturally in the water supplies of many areas and at a time in history we take to be around the early 1930's, it was discovered that dental experience was significantly different in such areas. Generally speaking, those differences were a lower percentage of tooth decay, and in some areas, an incidence of mottled teeth, or chronic endemic fluorosis. The result of these discoveries was extensive scientific study, research, testing and experimentation which ultimately laid the basis for the program of artificially fluoridating public drinking waters.

Reduced to their simplest terms, the general scientific conclusions reached were: that the ingestion of fluoridated waters results in a hardening of tooth enamel which makes for greater resistance to tooth decay; that the beneficial

effects develop in the human body from birth through the ages of 12 to 14 years, being the period when the dentine and enamel of permanent teeth are being formed; that the protection acquired in the formative stages carries over into adult life; that the ingestion of fluorides in moderate amounts has no harmful effects on the human body; and that seriously mottled teeth occur only where excessive amounts of fluorides are ingested. Based upon these findings, and with the endorsement of various scientists, dental associations, health and medical groups, and governmental agencies, (*e.g.* the United States Department of Health and in our own jurisdiction the Illinois Department of Health,) many cities starting in the early 1950's, began fluoridating public water supplies as a health measure.

As could be expected, however, artificial fluoridation has not been entirely free from sincere and conscientious objection on the part of some scientific and medical men, and proposals to pursue such a program have been expressly rejected in some communities. In the present case plaintiffs introduced evidence, largely through the medium of expert opinion, to the effect that the ingestion of fluorides has no appreciable effect upon the reduction of dental caries, or at least a doubtful and as yet undetermined effect; that it merely delays and postpones tooth decay rather than preventing it; and that the whole problem of tooth decay, as well as its solution, is a matter of diet and nutrition in which fluorides are neither necessary nor a factor. Defendants' expert witnesses, for the most part men with long and extensive experience in the actual research and testing which has gone into the scientific effort to determine the relationship between the fluoride content of water and dental caries, testified exactly to the contrary. According

to their opinions fluoridation has and does result in a direct reduction of dental caries among children, and by fluoridating Chicago's water supply at a level of one part per million decay will be reduced in the permanent teeth of children by as much as 50 to 60% after a period of 10 years.

Fluoride is a toxic substance, which is not an essential element of the human body, and when introduced into the system by whatever means is in part absorbed and accumulated in bones and body tissues, as well as in the teeth. While conceding that the susceptibilities of the particular individual and the amounts of fluoride involved are factors, plaintiffs' experts were of the opinion that one of the long range effects of fluoridating public drinking water could be the development of chronic fluoride poisoning in a substantial number of citizens. Such a condition, they stated, would interfere with certain natural body processes as its primary effect, and as possible secondary effects could cause nausea, vomiting, constipation, diarrhea, changes in the hair, skin and nails, skin eruptions, abnormal bones and kidney stones. Additionally, they testified that damage would result to the kidneys, liver and other vital organs; that the nervous system would be directly and harmfully affected; that the spine would be affected; that loss of muscle power and altered reflexes would occur; and that the poisoning would interfere with reproduction, decrease fertility, decrease the mother's milk supply, increase still births and stunt growth. They classified diabetics, people susceptible to allergies, arthritics and women during pregnancy and menstrual periods as groups particularly sensitive to any intake of fluoride. One of the plaintiffs, a practicing dentist who examined only 16 to 18 young patients a year, testified that since the commencement of fluoridation of water in Chicago he had observed gum

damage in the mouths of children. This was flatly contradicted by witnesses for defendants who examine thousands of children each year.

Based upon tests with animals, upon statistics relative to fluoride poisoning, upon tests and studies of the retention and excretion rate of fluoride in the human body, upon medical experience and upon a series of autopsies performed upon bodies of persons living where the water supply had a natural fluoride content of 2.5 parts per million parts of water, defendants' experts testified in essence that the lifetime consumption of water fluoridated by one part per million would have no harmful or adverse effects upon the human body, and were of the opinion that water fluoridated to such an extent could be safely ingested without cumulative toxic effect. More specifically, one defense witness testified that the ingestion of fluoride in such quantity and in such manner could not possibly have harmful effects upon bones, the kidneys, the heart or tissues of the body. According to another witness, only a small fraction of fluorides ingested is retained in the body, the greater portion being excreted naturally through the kidneys and sweat glands, and whenever the concentration of fluoride in the blood tends to rise the mechanisms which carry fluoride out of the blood also tend to increase their activity and to maintain a balance, unless overwhelmed by the sudden intake of large amounts of fluoride. In this connection, the witness stated that for the ingestion of fluorides to become dangerous a person would have to ingest at one time in the neighborhood of 1000 to 2000 times the amount that he could normally ingest in a day by drinking water fluoridated by one part per million.

On the subject of retention by the human body, a witness for plaintiffs testified there are variations from indi-

vidual to individual, some retaining more than others, and it was his opinion that children who would retain the whole intake of fluoride from Chicago's water would be susceptible to ill effects as time progressed. Over defendants' objection, the same witness was permitted to testify to an uncompleted experiment he was conducting by injecting fluoride in a concentration of 6.8 parts per million, (far in excess of the optimum level maintained by Chicago,) into a group of 30 persons, 20 of whom were already afflicted with fluorosis and 10 of whom were "not suspected of fluorosis." According to his preliminary findings and report, the persons suffering from fluorosis excreted an average of 25.6% of the fluoride administered, while the others eliminated an average of 57.1%.

There was a similar division of evidence and opinion on the issue of whether fluoridation by one part per million would result in widespread chronic endemic fluorosis, or mottled enamel. This condition, which has its beginning from the effect of fluoride on the enamel-forming cells of the tooth bud, does not affect the tooth structurally or functionally but presents largely a problem of cosmetics or esthetics. Its incidence follows no fixed pattern, individual differences and other variables again apparently playing a part, and it may range from mild to severe cases and varying degrees in between. In its mildest form, detectable only by the trained eye, the tooth appears bleached or chalky white in its entirety or in spots. Later, in the progression to a severe case, the enamel tends to become pitted and stained yellow, brown or almost black. Also, it appears that, for the most part, the condition ordinarily occurs on surfaces which are not apparent from outside the mouth.

Generally, it was the testimony of defendants' experts that in order for mottled teeth to occur the intake of fluoride

would have to be excessive, one witness stating the concentration would have to be above three parts per million; that no disfiguring or severe mottling would occur where there was a concentration of only one part per million; that instances of dental fluorosis had been few and far between in Chicago and other communities having a comparable program; and that a mottled tooth was preferable to a decayed tooth from the point of view of general body health. For the plaintiffs, an expert testified that 17% of the children drinking artificially fluoridated water from birth until they are old enough to have permanently erupted teeth will show some degree of mottled enamel, and a showing was made of statistical studies revealing the incidence of mottling, or suspected mottling, in communities where the natural fluoride content of their water supplies ranged from .2 to 1.2 parts per million parts of water. The statistician, however, who happened to be one of the expert witnesses for defendant, classified the cases of mottling as "mild" or "very mild" and, while we entertain some doubt as to the validity or consistency of his conclusion, testified in this cause that the statistical experience of other communities in this respect could not be projected to the city of Chicago.

We do not agree that the master's findings of fact are either against the manifest weight of the evidence, or in some intances without evidentiary support, as plaintiffs contend. A presumption of validity attaches to municipal enactments and regulations adopted under the police power and the burden of proving to the contrary is upon him who asserts the invalidity. (*Kieg Stevens Baking Co.* v. *City of Savanna*, 380 Ill. 303; *Stearns* v. *City of Chicago*, 368 Ill. 112.) And while, as we have noted, such legislative action is generally subject to judicial review to determine

whether it is related to and reasonably necessary and suitable for the protection of the public health, safety, welfare or morals, courts will not disturb a police regulation where there is room for a difference of opinion, but in such case the legislative judgment will prevail. (*McCray* v. *City of Chicago,* 292 Ill. 60; *Dunlap* v. *City of Woodstock,* 405 Ill. 410.) Furthermore, the wisdom, necessity and expediency of police regulations are no concern of the courts, but are matters primarily for the legislative body of the municipality, and courts are without power to interfere merely because they believe a different regulation might have been wiser or better. *City of Chicago* v. *Waters,* 363 Ill. 125; *Chicago Cosmetic Co.* v. *City of Chicago,* 374 Ill. 384.

From all of the evidence in this record, as well as the scientific, professional and legal authorities which have been brought before us, there appears to be extraordinary accord that fluorides act to prevent and reduce tooth decay, and that artificial fluoridation to the extent of one part per million parts of water will not, either presently or cumulatively, result in harmful systemic effects. Apart from the extensive scientific research which led to these conclusions, equally impressive are the painstaking legislative inquiries at Federal, State and local levels which have preceded the endorsement and adoption of fluoridation programs. As we see it, the closest factual issue arises over the question whether artificial fluoridation, to the extent here involved, will in fact produce what could be described as harmful effects in the matter of mottled teeth. At best, however, the evidence with respect thereto presents only a debatable question where there is room for difference of opinion, and while it is our belief the proof is more susceptible to a conclusion that severe and disfiguring endemic dental fluorosis will not result from artificial

fluoridation to the extent practiced here, it is enough to say it is an area in which the legislative judgment must prevail. We conclude that the artificial fluoridation of water is reasonably related to the public health, and that the program adopted by Chicago is necessary and suitable for the protection of public health.

Departing from considerations directly related to bodily health, plaintiffs also contend that the Chicago program is arbitrary and unreasonable because it is wasteful and because it is being administered in a "haphazard" manner. We do not find that either point is well taken. The claim of haphazard administration is founded upon charts of daily tests which show that the fluoride content does not at all times measure at precisely one part per million parts of water, but fluctuates in varying degrees slightly above or slightly below that figure. However, further proof shows that the absolute perfection for which plaintiffs contend is not possible to achieve, that the city tries and usually does maintain the proportion of fluoride so there will be .95 parts per million parts of water, and that the amounts of fluoride ingested in those instances where the content slightly exceeds one part per million will not have present or cumulative harmful effects. We would add, too, it appears that the methods, tests and controls being employed to insure safety meet the highest standards.

The claim of a wasteful program arises from the fact that the program has had a capital outlay of roughly $500,000 and operational costs of about $350,000 a year, and from the circumstances that Chicago has but one system of pipes to distribute its water supply with the result that only a small fraction of the total fluoridated supply is actually ingested by the 6 to 14 age group it is intended to benefit. This, the plaintiffs urge, is a needless waste of public funds particularly in view of the alternate meth-

ods by which fluorides could be administered to children, as for example: by topical application, by pills dissolved in water, and by the use of fluoridated milk, mouthwash or toothpaste. There is, however, proof in the record that such alternative methods would not be as safe, economical and effective as the fluoridated water program, that they would not effectively accomplish the widespread public purpose of the program, that the only practical method of employing the beneficial effects of fluoride is by treating drinking water, and that the public expense and apparent waste of a part of the fluoridated water supply is more than offset by the beneficial results to be attained. Taking into account all of the circumstances, particularly the purpose of benefitting the entire population, we cannot say that the program is unreasonable or arbitrary on such ground. *Cf. Readey* v. *St. Louis County Water Co.* (Mo. 1961,) 352 S.W.2d 622, 632; *Kraus* v. *City of Cleveland*, 163 Ohio St. 559, 127 N.E.2d 609, 612.

Finally, plaintiffs assert that the program is an improper exercise of the police power because tooth decay is not a communicable or epidemic disease; because only a small segment of the population, the city's children, are benefited; and because it subjects all users to mass medication in violation of the fundamental and inalienable right of each individual to determine whether or not they wish to be so treated. These constitutional claims have both their source and their unanimous rejection in the decisions of our sister States, heretofore cited, which have treated upon the problem and we see no useful purpose in a detailed analysis or repetition of the grounds for rejection. Suffice it to say that those well-reasoned precedents, with which we are in accord: (1) sustain the right of municipalities to adopt reasonable measures to improve or protect the public health, even though communicable or epidemic dis-

cases are not involved: (2) hold that the benefits of fluoridation which carry over into adulthood absolve such programs of the charge of being class legislation; and (3) conclude that fluoridation programs, even if considered to be medication in the true sense of the word, are so necessarily and reasonably related to the common good that the rights of the individual must give way. *Cf. Jacobson* v. *Commonwealth of Massachusetts,* 197 U.S. 11, 49 L. ed. 643.

Two collateral issues remain to be considered. First, the contention of plaintiffs that the exercise of the police power here is invalid because it was accomplished by resolution rather than by ordinance; and second, the contention of defendants on cross appeal that the trial court erred in apportioning half of the master's fees and charges to the city of Chicago. We do not find, however, that the first issue was ever raised or passed upon in the trial court, with the result that it is not properly before us for review and will not be considered. (*Pickus* v. *Board of Education,* 9 Ill.2d 599; *Zehender & Factor, Inc.* v. *Murphy,* 386 Ill. 258.) As to the second, it is axiomatic that the assessment and apportionment of fees and costs rest in the sound discretion of the trial court. (*McFail* v. *Braden,* 19 Ill.2d 108; *Jones* v. *Felix,* 372 Ill. 262,) and we perceive no abuse of discretion in this case. While the judicial view of artificial fluoridation has since become crystallized and fixed along discernible lines, the complaint filed in this proceeding, which has been unduly prolonged, reflects generally upon a time when the constitutionality of such programs was uncertain and when the bona fides of plaintiffs' action could not seriously be contested.

The decree of the superior court of Cook County was correct and is therefore affirmed.

Decree affirmed.

APPENDIX "B"

PETITION OF JOSE M. LENONE FOR LEAVE TO INTERVENE AS A PLAINTIFF-APPELLANT IN THE ABOVE-ENTITLED CAUSE, DATED JANUARY 10, 1964, WITH SUPPORTING AFFIDAVIT

Jose M. Lenone, by Albert W. Dilling and Kirkpatrick W. Dilling, his attorneys, hereby petitions this Honorable Court for leave to intervene as a Plaintiff-Appellant in the above-entitled cause and states to the Court the following:

This petition (or application) is being filed pursuant to Section 26.1 of the Civil Practice Act of the State of Illinois (Chapter 110, Illinois Revised Statutes), entitled "Intervention", the applicable portions of which are as follows:

> "(1) Upon timely application anyone shall be permitted as of right to intervene in an action: " . . . (b) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action. . . . "
>
> "(5) A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he proposes to file. . . .
>
> "(6) An intervenor shall have all the rights of an original party, except that the court may in its order allowing intervention, whether discretionary or a matter of right, provide that the applicant shall be bound by orders, judgments or decrees theretofore entered or by evidence theretofore received, that the applicant

shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require."

Attached hereto and made a part hereof is an affidavit in support of said petition.

Since your petitioner, if permitted to intervene herein, will stand upon the record in this cause as it now is, he does not attach hereto any proposed pleading or motion, this petition setting forth all matters sought by him to be presented to the Court.

Petitioner respectfully prays that this Court may grant him leave to intervene as a plaintiff-appellant in the above-entitled cause.

AFFIDAVIT OF JOSE M. LENONE IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE

Jose M. Lenone, being first duly sworn, on oath deposes and says:

1. He is a retired Lieutenant Colonel in the United States Army Reserve.

2. He has been a resident of the City of Chicago since 1911 and presently resides in the Bryson Hotel, 4932 Lake Park Avenue, Chicago.

3. He is, and since 1913 has been, a member of The First Church of Christ, Scientist, Boston, Massachusetts, the so-called "Mother Church".

4. He is, and since 1914 has been, also a member of the Fifth Church of Christ, Scientist, Chicago, Illinois,

which meets at 4840 Dorchester Avenue, Chicago, and has been the President of the Board of Directors of the said Fifth Church and is also its Treasurer.

5. As a member of the Christian Science Church, he is, and all along has been, opposed to fluoridation of the public water supply of the City of Chicago.

6. He believes in and subscribes to the tenets, beliefs, and doctrine of the Christian Science Church. As to these tenets, Plaintiff-Appellant Walter Olson testified in this cause:

> "The doctrine of the Christian Science Church denies the beneficial effect of material remedies and teaches sole reliance on the power of God. The Church is affirmatively opposed to material medicine as to its members."

7. Petitioner has at all times exactly subscribed to said tenets, beliefs, and doctrine.

8. He is opposed to the use of medication of any kind and objects to mass medication through the addition of a fluoride to his drinking water.

9. The public water supply of the City of Chicago is the only public and practicable water supply available to him.

10. He therefore drinks fluoridated water under compulsion in spite of his strong religious objections thereto.

11. He states that fluoridation of his water supply is a gross violation of the religious liberty guaranteed to him by the First Amendment to the Constitution of the United States, and Section 3 of Article II of the Illinois Constitution.

12. As the record in this cause discloses, Walter Olson, one of the plaintiffs-appellants in this cause (now deceased), was also a member of the Christian Science faith, and being opposed to fluoridation of the Chicago water supply because of the fact that it violated the religious beliefs and rights of said faith, and the religious freedom of its members, guaranteed to them by the First Amendment of the U. S. Constitution, and Section 3 of Article II of the Illinois Constitution.

13. A holding in this cause that fluoridation of the Chicago water supply violated the Constitutional religious liberties and rights of Christian Scientists, including Walter Olson, would have constituted an adjudication and ruling in favor of petitioner and others of his faith, protecting him and all others similarly situated from further violation of religious liberties and freedoms as caused by fluoridation of the Chicago water supply.

14. The stand and position taken by Walter Olson herein was precisely representative of the stand and position heretofore held, and now held, by your petitioner with respect to fluoridation of the Chicago water supply, and particularly with regard to petitioner's religious Christian Science beliefs and rights.

15. Petitioner has at all times been opposed to fluoridation of Chicago's public water supply and has been greatly interested in the litigation involved herein, but until now has been secure in the belief that Plaintiff-Appellant Walter Olson's active participation in the case was of such a nature as to adequately represent petitioner and his views and beliefs in connection therewith.

16. He respectfully states to the Court that this situation has now changed because of the untimely death of

Walter Olson in an automobile accident, leaving petitioner without representation and causing him to file this petition for leave to intervene.

17. Because of the untimely death of plaintiff-appellant Walter Olson, heretofore suggested to the Court by William C. Wines, Esq., no present party hereto is a member of the Christian Science faith, and the representation of your petitioner's aforesaid interest is or certainly may be inadequate, this circumstance arising at a time when, after more than seven and one-half years of litigation, the vital matters in question are pending for early decision by this Court.

18. In the event that the Court should, due to the fact that no Christian Scientist remained a party hereto, fail to rule upon the question as to whether fluoridation of the Chicago water supply violates the religious freedoms and rights of members of the Christian Science faith, including petitioner, the failure to do so would leave in effect the ruling of the trial Court herein, wherein it was decreed, erroneously as your petitioner avers, that fluoridation did not violate such religious freedom and rights.

19. Thus, due solely to the fact that there would be no party herein representing the interest of your petitioner as to his religious freedom and rights, he would be bound by a trial Court decree which is, he avers, erroneous, and should be reversed by this Honorable Court.

20. Petitioner would thus be bound by an erroneous trial Court decree, due solely to the lack of a ruling by this Honorable Court upon review of the same.

21. Your petitioner has just learned of the death of Walter Olson and makes this application to intervene in the above cause at the earliest possible time after being notified thereof.

22. If permitted to intervene herein, your petitioner would not seek to adduce further evidence and would be bound by any evidence heretofore adduced herein, including that adduced by the said Walter Olson.

23. If permitted to intervene herein, your petitioner would not present further pleadings, or further argument or briefs on the matters heretofore presented to the Court, but would be bound by all previous proceedings in the above cause.

24. If permitted to intervene herein, your petitioner would not raise new issues or add new parties, or in any manner otherwise seek to delay the expeditious and early ruling of the Court upon the issues herein.

Further deponent says not.

APPENDIX "C"

COUNTER-SUGGESTIONS IN OPPOSITION TO MOTION TO DISMISS APPEAL OF PLAINTIFF-APPELLANT OLSON.

Plaintiffs-Appellants, by Albert W. Dilling and Kirkpatrick W. Dilling, their attorneys, pursuant to leave of Court first obtained, file herewith counter-suggestions in opposition to motion to dismiss appeal of Plaintiff-Appellant Walter Olson.

Time for Making Motion to Dismiss

Section 592 of Volume 2 of *Illinois Law and Practice*, Appeal and Error (Page 535), entitled "Time for Making", includes the following:

> "A motion to dismiss an appeal should be made with reasonable promptness", citing *Miller* v. *Shackmann*, 311 Ill. App. 573, 37 N.E. 2d 370, in which a motion to dismiss was held to be too late where made long after time fixed for filing briefs of appellee.

The *Miller* case involved an appeal from an order of the Circuit Court of Jasper County denying, among other things, the petition for removal of the Public Administrator. The opinion by Mr. Justice Culbertson contains the following (Page 575):

> "On appeal to this court the appellee filed a motion to dismiss the appeal on the ground that appellant had failed to file a sufficient abstract of record. Such motion to dismiss the appeal was made long after the time fixed for the filing of briefs of appellee and was, therefore, made too late for consideration by this court . . . The motion to dismiss the appeal is, therefore, denied, and we shall proceed to a consideration of this case on the merits."

Section 592 continues, as follows: "and as a general rule a motion to dismiss an appeal made after submission of the appeal for decision on the merits is too late",

Citing five cases in foot-note 60, as follows:

"*People ex rel. Williamson* v. *Chicago, B. & Q. R. Co.*, 1912, 97 N.E. 245, 253 Ill. 100.

"*Cincinnati, I. & W. Ry. Co.* v. *People*, 1903, 69 N.E. 40, 205 Ill. 538.

"*Swain* v. *Hoberg*, 1942, 38 N.E. 2d 966, 312 Ill. App. 610, reversed on other grounds 44 N.E. 2d 38, 380 Ill. 412.

"*Thrift Inc.* v. *State Bank & Trust Co.*, 1939, 19 N.E. 2d 126, 298 Ill. App. 501.

"*Healy* v. *Ross*, 1936, 3 N.E. 2d 893, 286 Ill. App. 620."

The *Burlington Railroad* case involved an application for judgment and order of sale by E. G. Williamson, County Collector, against the property of the Chicago Burlington and Quincy Railroad Company, for certain taxes. The opinion contains the following, at page 104:

> "It is finally contended by the appellee that the appeal in this case was improperly allowed, as it does not appear from the record that the amount of taxes for which judgment was rendered was deposited with the county collector before the appeal was perfected. No motion was made in this court to dismiss the appeal, but briefs were filed by both parties and the case was submitted to the court upon its merits and taken for decision, without objection, upon the errors assigned. The objection comes, therefore, too late. *Wabash Railroad Co.* v. *People*, 196 Ill. 606."

The opinion in *Wabash Railroad Co.* case contains the following, at page 611:

> "It is objected to by the appellee that the appeal in this case was improperly allowed. No motion was made to dismiss the appeal, briefs were filed by both parties and the case submitted to the court for decision upon the errors assigned. The objection comes too late." Citing *Eggleston* v. *Royal Trust Co.*, 192 Ill. 101.

In the *C., I. & W. Ry. Co.* case, the opinion of this Court includes the following, at page 538.

> "As to the second proposition" (that is, that the appeal in the case was not properly taken), "the record shows that appellant deposited the sum of $510.18 with the county collector, in compliance with the statute, for the purposes of the appeal. But if that were not so, the objection comes too late. No motion was made to dismiss the appeal, but appellee joined in error and briefs were filed by both parties, and the case was submitted for decision on the errors assigned. The question whether the appeal was regularly taken does not arise on such submission, and it could only be presented by a motion to dismiss the appeal. *Wabash Railroad Co.* v. *People*, 196 Ill. 606."

The opinion in the *Swain* case includes the following (Page 611):

> "Upon this appeal, appellant makes no assignment of errors relied upon for reversal. Subsequent to the time the case had been reached on call and assigned for opinion, appellee filed her motion to dismiss the appeal on the ground that appellant had made no assignment of errors as required by the rules. Appellant thereafter filed his countermotion, setting up among other things that appellee's motion came too late and could not be considered, because not filed until after the case had been reached on call and taken under advisement by the court for opinion. Appellant

further urged that the statement of facts in his brief constituted a reasonable compliance with the rules; that appellee by filing her brief admitted the appellant's brief was not jurisdictional. Appellant asks that in the event the court should determine that he should make a statement of the errors relied upon for reversal, he be given leave to reprint his brief and argument with such assignment incorporated therein, and file same within a short day to be fixed by the court.

"Under the former Practice Act, the Supreme Court in the case of *Armour* v. *Pennsylvania R. Co.*, 353 Ill. 575, at page 580 of the opinion, in speaking of the necesssity for an assignment of errors, uses the following language: 'An assignment of errors is not a mere matter of form that may be waived or dispensed with by the agreement of the parties; but it is essential to a review of the cause and in its absence the appeal of writ of error will be dismissed'."

The *Thrift, Inc.* case involved an appeal by the defendants from a judgment for $2,010.60 in an action brought by the plaintiff based upon the breach of a certain contract in writing. The opinion of the Appellate Court contains the following, commencing at page 505:

"The plaintiff suggests that the defendants' appeal must be dismissed, not having been perfected within 90 days after the judgment appealed from. It appears from the record that judgment was entered on January 17, 1938. The notice of appeal was filed and served on May 4, 1938, more than 90 days after the entry of the judgment. Plaintiff suggests that under section 76 of the Civil Practice Act (Ill. Rev. Stats. 1937, ch. 110, §200 (Jones Ill. Stats. Ann. 104.076), appellate jurisdiction had expired unless something can be done to toll the statute.

"The reply of the defendants is that on January 26, 1938, the defendants filed what is designated as a mo-

tion for a new trial, which was considered by the court after argument and on February 9, 1938 the motion for a new trial was denied.

"It does appear from the record that the plaintiff, by attorney, made the statement in court that it would not stand on a technical objection. However, the proper practice to have been taken by the plaintiff in this matter was a motion to dismiss the appeal. The Supreme Court in passing upon a like matter in the case of *Cincinnati, I. & W. Ry. Co.* v. *People ex rel. Moffett*, 205 Ill. 538, said:

> " 'As to the second proposition, the record shows that appellant deposited the sum of $510.18 with the county collector, in compliance with the statute, for the purposes of the appeal. But if that were not so, the objection comes too late. No motion was made to dismiss the appeal, but appellee joined in error and briefs were filed by both parties, and the case was submitted for decision on the errors assigned. The question whether the appeal was regularly taken does not arise on such submission, and it could only be presented by a motion to dismiss the appeal. *Wabash Railroad Co.* v. *People*, 196 Ill. 606.'

"In *Wabash R. Co.* v. *People ex rel. Funck*, 196 Ill. 606, the court made this statement:

> " 'It is objected by the appellee that the appeal in this case was improperly allowed. No motion was made to dismiss the appeal, briefs were filed by both parties and the case submitted to the court for decision upon the errors assigned. The objection comes too late.'

"So that the plaintiff having failed to make a motion to dismiss the appeal and having submitted the cause for this court's decision upon the merits, we shall consider the case upon the suggestions for relief other than the question of dismissal, which we have concluded is not properly before this court."

It is respectfully submitted that the motion to dismiss the appeal of Appellant Walter Olson filed herein purportedly on his behalf is "too late" and that the said motion should be denied.

What is Status in this Cause of William C. Wines, Esq.?

For seven and a half years, uninterruptedly, Albert W. Dilling and Kirkpatrick W. Dilling have represented and been counsel for plaintiffs-appellants in this cause, including Walter Olson. During that time, there has been no criticism or complaint whatsoever by Walter Olson, or any other plaintiff-appellant, concerning the conduct of this case by the said attorneys. As a matter of fact, counsel for all parties were commended by Master Goldberg for the manner in which the case had been conducted. Plaintiff Olson has not discharged Messrs. Dilling as his counsel herein. Nor has he directed them to cease the pending appeal herein. No substitution of attorneys' has been filed in this cause. So the said Messrs. Dilling are still attorneys for all the plaintiffs, including Walter Olson.

Whom, then, does William C. Wines represent in this cause? Some light was thrown upon this matter on December 24, 1963 at the hearing before Honorable Walter V. Schaefer when Mr. Wines filed the motion to dismiss the appeal, purportedly on behalf of Plaintiff-Appellant Olson.

He stated that his fee for his services in connection was not being paid by Mr. Olson but by the Christian Science Church. This, of course, is in a measure borne out by the rather meager "verified suggestions" filed herein in Mr. Olson's behalf in support of Mr. Wines' motion.

As a matter of fact, are not the circumstances involved tantamount to having the motion to dismiss Mr. Olson's appeal that of a third party without any standing at all

so far as this cause is concerned, in complete violation of applicable law? It is clear that the moving spirit behind this motion to dismiss an appeal is someone in The First Church of Christ, Scientist, in Boston, Massachusetts.

Plaintiff-Appellant Olson's Testimony

Plaintiff-Appellant Olson's testimony under oath appears in the abstract, pages 122 to 127, inclusive. In it, he unequivocally voiced his objections to fluoridation of Chicago's water supply, stating that, as a member of the Christian Science Church, he is opposed to fluoridation of the City water supply.

He has objection to the fluoridated water but drinks it despite his objection. He was opposed to fluoridation prior to the time of the institution of the fluoridation program by the City and his attitude has continued to this time (that is, the time when he was testifying).

There is nothing in the record in this cause to indicate that Mr. Olson has changed his views concerning fluoridation.

Grounds for Motion

Volume 2 of *Illinois Law and Practice*, already cited above, states the following (Section 591, Page 534), under the title "Form and Requisites" (of Motion to Dismiss an Appeal):

> "A motion to dismiss an appeal shall set out the grounds on which it is based with particularity."

The motion to dismiss appeal filed herein, purportedly on behalf of Mr. Olson does not set out grounds "with particularity". The verified suggestions in support of the

motion that "as a result of that conference" (that is with the General Counsel of the Church and others) "and other considerations" a withdrawal is desired.

Just who were these "other members" of the Church, and what are the "other considerations" mentioned? The motion is insufficient, as it stands, and it should be denied.

In *Corpus Juris Secundum*, Vol. 5, Appeal and error, Section 1353, page 501, under the title, "Grounds for Dismissal", the following appears:

> "Appeals will not be dismissed on mere technicalities or inaccuracies, but only for good reason or on substantial grounds. Thus a motion to dismiss an appeal must be made on some legal ground recognized by statute or rules of Court, or otherwise present substantial defects of such a nature as to preclude a fair determination of the cause on appeal, or the motion will be denied". *Citing First Nat. Bank of Jonesboro* v. *Road District No.* 8, 58 N.E. 2nd 884, 389 Ill. 156. Also, *Litchfield Nat. Bank* v. *McBride*, 7 N.E. 2d 348, 289 Ill. App. 420.

Conclusion

In conclusion, we urge that the motion to dismiss appeal be denied and that this Court consider this cause on its merits just as it was submitted to the Court on November 26, 1963, when it was argued orally.

The following affidavit was filed in support of the counter-suggestions:

AFFIDAVIT

Albert W. Dilling, being first duly sworn, on oath deposes and says:

1. He is one of the attorneys for plaintiffs-appellants in the above-entitled cause.

2. He prepared the counter-suggestions in opposition to the motion to dismiss the appeal of Walter Olson, one of the plaintiffs-appellants in this cause.

3. Those matters contained in the said counter-suggestions that are not a matter of record are true in substance and in fact.

Further deponent says not.

APPENDIX "D"

Decree of Judge Samuel B. Epstein, entered July 10, 1962:

This cause having come on to be heard by the court upon the third amended petition for injunction of plaintiffs, Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius, and Walter Olson, by their attorneys, Albert W. Dilling and Kirkpatrick Dilling, and upon the joint and several answer of the defendants City of Chicago, a Municipal Corporation, Richard J. Daley, indivdually and as Mayor of said City, Carl H. Chatters, individually and as Comptroller of said City, James W. Jardine, individually and as Commissioner of the Department of Water and Sewers of said City, and W. W. De Berard, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water, by John C. Melaniphy, Corporation Counsel of the City of Chicago, and William J. Kafka, Assistant Corporation Counsel, their attorneys, and the cause having been referred by the Court to Honorable Mayer Goldberg, Master in Chancery of the Superior Court of Cook County, for the purpose of taking testimony and for a report of his findings of fact and conclusions of law and recommendations thereon; and the parties having appeared and testimony having been adduced on all of the issues created by the pleadings and upon the transcript of the testimony taken before said Master, and exhibits introduced and admitted, and the Master having made his report, and the plaintiffs having filed objections to said report, and said objections have been overruled by the Master, and the Court having examined the pleadings, the transcript of evidence, the exhibits, the Master's report, and the objections filed and entered as

exceptions thereto, and having heard the arguments of counsel for the respective parties hereto and the Court being fully advised in the premises, Finds:

1. That the Court has jurisdiction of the parties hereto and of the subject matter hereof;

2. That the Master in Chancery has proceeded in all respects in accordance with the law and the order of reference herein;

3. That the objections filed herein, by the plaintiffs, and entered as exceptions to said Master's report, should be overruled;

4. That all the findings of fact made by the Master in his report are in accordance with the evidence and that the conclusions of law and the recommendations set forth by the Master are proper in all respects so that the Master's report should be approved by this Court.

It Is Therefore Ordered, Adjudged And Decreed:

1. That the Master's report shall be and is hereby adopted, confirmed and approved in every respect and all objections and exceptions thereto are hereby overruled;

2. That this cause shall be and is hereby dismissed for want of equity.

3. That the fee and charges of Master in Chancery, Mayer Goldberg, in the sum of $6,937.50 as set forth in the Master's certificate of service fees and charges filed with this report is hereby approved and taxed as costs, one-half against the plaintiffs, Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius and Walter Olson, and one-half against the defendant, City of Chicago, and the same to be paid to said Master in Chancery, Mayer Goldberg.

4. It is hereby certified that there is involved in this cause the validity of a Municipal Resolution, and further involved herein questions regarding the Constitutions of the State of Illinois and the United States, and that in the opinion of the Court, the public interest requires that in the event of an appeal shall be taken, it shall be taken directly to the Supreme Court of Illinois.

APPENDIX "E"

Section 26.1, Chapter 110, Illinois Revised Statutes, entitled "Intervention", so far as pertinent, reads as follows:

> "(1) Upon timely, application anyone shall be permitted as of right to intervene in an action: ". . . (b) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment decree or order in the action. . . .
>
> "(5) A person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he proposes to file. . . .
>
> "(6) An intervenor shall have all the rights of an original party, except that the court may in its order allowing intervention, whether discretionary or a matter of right, provide that the applicant shall be bound by orders, judgments or decrees theretofore entered or by evidence theretofore received, that the applicant shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require."

Resolution adopted June 16, 1954 by the Chicago City Council providing for fluoridation of part of the City's public water supply.

> "WHEREAS, It has been proved, both through the medium of scientific testing and through the many

years of actual practical experience of various municipalities throughout the country, that the presence of fluorides in the drinking water supplied the public has a known beneficial effect upon the condition of the teeth of the entire population both in adults and in children, but particularly in the case of children; and

"WHEREAS, The Illinois Department of Public Health encourages and urges the addition of fluorides to public water supplies so as to maintain an optimum fluoride level of 1.0 to 1.5 parts per million in communities in which the fluoride level is below that percentage; and

"WHEREAS, It has been determined on the basis of study and investigation that this element is not found in the present supply of water distributed to the people of Chicago; and

"WHEREAS, Long-term studies made at such divergent points as Grand Rapids, Michigan; Newberg, New York; Brantford, Ontario; and Evanston, Illinois, have demonstrated that the addition of one part of fluoride to one million parts of water supplied to said municipalities reduced the incidence of dental caries in the permanent teeth of children as much as from 46.2 to 77 percent and has produced no deleterious effect of any kind on any persons located in said municipalities who have been drinking the water so fortified; and

"WHEREAS, Approval of the introduction of fluoride into the water supply of the City of Chicago has been given by the American Medical Association, Chicago Medical Society, American Dental Association, Chicago Dental Society, the U.S. Public Health Service, and National Congress of Parents and Teach-

ers, Chicago Board of Health, the Cook County Department of Public Health, the Illinois Department of Public Health and the American Water Works Association; and

"WHEREAS, As a result of a resolution introduced in the City Council on October 31, 1951, by Alderman Alfred J. Cilella (36), a Special Subcommittee of the Health Committee was appointed to study the entire public health matter of fluoridation and

"WHEREAS; This Subcommittee has carried on extensive investigations (its Chairman also has visited several municipalities which have fluoridated their water supplies), has conducted numerous highly publicized public hearings at which ample opportunity was given to all citizens to express their opinions, sentiments, and scientific data; and

"WHEREAS, This Subcommittee has found that 'fluoridation is not harmful', that 'fluoridation is beneficial', and the cost is nominal and within the general capabilities of the City of Chicago; and

"WHEREAS, Nine hundred and sixty-one other American communities have added fluorine to their water supplies and now are experiencing reductions in dental decay; and

"WHEREAS, Fluoridation also has been proved by the office of the Surgeon General of the U. S. Army, National Institute of Dental Research, American Public Health Association, Association of State and Territorial Health Officers and Commission on Chronic Illness; and

"WHEREAS, There are more than 1,127,000 children who now can benefit from fluoridation—benefits

which will carry over into and throughout their adult life; and

"WHEREAS, The Corporation Counsel of the City of Chicago has ruled that:

> " 'It is our opinion that the use of fluoride in the water supply of Chicago as a health measure under scientific control would not violate any constitutional or other legal rights of any water users';

and

"WHEREAS, The trend of public sentiment and demand preponderately is in favor of the fluoridation of the present supply of drinking water provided in the Chicago area; and

WHEREAS, Only in compliance with the regulations of the Illinois Department of Health and only after engineering plans and specifications and methods of operation incidental to such a project have been approved by said Illinois Department of Public Health, can any program for the fluoridation of Chicago's water be put into operation:

NOW, THEREFORE, BE IT RESOLVED, That the fluoridation of the water supplied for drinking purposes through the Chicago waterworks system is hereby declared to be in the interests of the public health, and that steps for the introduction of fluoride in a concentration adequate for safety and in accordance with the regulations prescribed by the Illinois Department of Public Health be undertaken by the City of Chicago through its Department of Water and Sewers with the cooperation of the Chicago Board of Health by January 1, 1955."